

The Official Website of the Department of Revenue (DOR)

Department of Revenue

Mass.Gov Home State Agencies State Online Services



DOR
Home

For
Individuals and Families

For
Businesses

For
Local Officials

For
Tax Professionals

Home > Businesses > Help & Resources > Legal Library > Letter Rulings > Letter Rulings - By Year(s) > (2000-2004) Rulings >

Letter Ruling 01-4: Provision of Administrative Services By Massachusetts Service Provider to Offshore Investment Companies

May 29, 2001

You request a letter ruling on behalf of ***** ("Company"). You ask whether the provision of Company's services in Massachusetts for its clients, various unrelated offshore investment funds ("Funds"), would subject the Funds to Massachusetts taxation.

I. Facts

The following is your representation of the facts upon which we base this letter ruling. Company is a Massachusetts trust company and a wholly-owned subsidiary of ***** ("Corporation"), a publicly-traded company.

One of Company's primary lines of business is the provision of accounting, custody, shareholder, daily pricing, information and related services with respect to institutional investment portfolios organized and managed by persons unrelated to Company.^[1] Company's customers for these services include investment companies ("Funds") organized outside the United States and which conduct all of their direct operations outside of Massachusetts. The Funds typically are organized as corporations, limited liability companies, or other associations or organizations with limited liability established, organized or chartered under the laws of a foreign jurisdiction, and classified as foreign corporations within the meaning of G.L. c. 63, § 30(2). In certain cases, a Fund could be organized as a common law business trust with transferable shares or as a limited partnership, thereby potentially subject to tax under G.L. c. 62. Company has historically provided custody services to the Funds in Massachusetts and has provided other services to the Funds from locations outside of Massachusetts.

In the course of performing portfolio accounting and recordkeeping services, shareholder services, investment management services, and custodial services for the Funds, Company will receive, generate, and maintain in Massachusetts various electronic and paper records and reports relating to the Funds' portfolios, including:

- records and reports of Fund accounts (such as general ledgers, data and reports, trial balances and other accounting materials),
- Fund pricing, net asset value ("NAV"), and performance data and reports,

SEARCH

Select an area to search

Search

- records of Fund ownership, including subscription agreements, information as to the identity of shareholders, the amounts of their contributions, the amounts of their unpaid capital commitments, and the values of their interests,
- shareholder communications, and
- supporting documentation and transactional documents.

These records will be maintained solely for use by Company in providing services to the Funds. However, because Company will be providing comprehensive day-to-day portfolio accounting and recordkeeping services to the Funds, it is likely that many of the Funds will not themselves maintain any corresponding records.^[2] In addition, in the course of performing custodial services, Company may also maintain certificated securities owned by a Fund at a location in Massachusetts.

Company will not be subject to any Fund's supervision or control in rendering services to any Fund. Company will hold itself out to the public as an independent service provider in the regular course of its business. Company will regularly perform similar services on behalf of multiple unrelated Funds. Company will not execute contracts on behalf of a Fund in Massachusetts, other than contracts related to the purchase, sale or management of securities on behalf of a Fund.

II. Ruling

For the reasons discussed below, we rule that Company's provision of accounting, custodial, investment management, shareholder and other administrative services as well as the receipt, generation and maintenance of relevant electronic and paper records and reports for the Funds will not cause Funds to be subject to Massachusetts taxation.

III. Discussion of Law

Under G.L. c. 63, § 39, an excise is imposed on every foreign corporation that exercises its charter, is qualified to do business or actually does business in Massachusetts, or owns or uses any part or all of its capital, plant or other taxable property in the state. As announced in TIR 98-6, an offshore investment company that is a foreign corporation within the meaning of G.L. c. 63, § 30(2), is not considered to be doing business in Massachusetts if its activities here are limited^[3] and those activities are conducted through an independent contractor. A person is an independent contractor only if the criteria listed in Massachusetts regulation 830 CMR 63.39.1(7) are met. TIR 98-6 further states that a service provider providing administrative and/or other services on behalf on an offshore investment company is generally considered to be an independent contractor. Moreover, service providers are allowed to utilize copies of books and records of the offshore investment company in Massachusetts without creating nexus for the offshore investment company so long as the principal books and records of the offshore investment company are kept outside of Massachusetts. See also LR 91-2.

In the case of a Fund organized as a limited partnership, foreign corporate partners may be subject to the excise imposed under G.L. c. 63, § 39, if the activities of the partnership, if conducted by a foreign corporation, would subject that corporation to the corporate excise. 830 CMR 63.39.1(8)(a). See also 830 CMR 62.5A.1(9). In this situation, if the activities of the limited partnership were limited to those activities performed by an independent contractor on behalf of the limited partnership, the foreign corporate partners of the limited partnership would not be subject to the provisions of G.L. c. 63, § 39. See LR 97-2.

In the case of a Fund organized as a corporate trust, a corporate trust^[4] engaged in any business, activity or transaction, whether or not it maintains an office or place of business within Massachusetts is subject to the taxes imposed under G.L. c. 62. See G.L. c. 62, § 8(a). The terms "any business, activity or transaction" are not, however, specifically defined in G.L. c. 62. Nevertheless, it has been held that a corporate trust is a "hybrid between an individual and a corporate taxpayer. . . . Essentially, the corporate trust is taxed as an 'individual' entity which closely resembles a corporation." *Minkin v. Commissioner of Revenue*, 425 Mass. 174, 178-179 (1997). Thus, in

determining whether a corporate trust is engaged in business in Massachusetts, it is appropriate to look to the nexus principles under G.L. c. 63, § 39 and 830 CMR 63.39.1 for guidance, even though the nexus standard for a corporation is broader than the nexus standard for a corporate trust. Following these principles, if the activities of a trust were limited to those performed by an independent contractor on behalf of the trust, the trust would not be considered to be engaged in business in Massachusetts.

Under the facts presented here, Company is a service provider providing administrative and other services on behalf of the Funds. In this regard, Company is acting as an independent contractor for the Funds. In addition, all of the records, received, generated and/or maintained by Company for the Funds will be received, generated and/or maintained by Company directly in the performance of its services as an independent contractor for the Funds. Although the records may relate to and be of interest to a Fund, these materials are not considered to be "principal corporate records and books of account" of the Funds, regardless of what documents the Funds themselves may maintain. Therefore, we rule that the service activities of Company are not enough, standing alone, to cause the Funds, whether organized as a foreign corporation, trust, or limited partnership, to be doing business in Massachusetts.[\[5\]](#)

Very truly yours,

/s/Frederick A. Laskey

Frederick A. Laskey
Commissioner of Revenue

FAL:DMS:rmh

LR 01-4

[\[1\]](#) A small percentage of these institutional investment portfolios may be sponsored by affiliates of Company. These affiliates will not take any actions on behalf of those portfolios in Massachusetts, and the Department does not rule herein as to the consequences of any actions taken by those affiliates in their capacities as portfolio sponsors.

[\[2\]](#) The Funds may themselves maintain periodic financial statements and other materials in summary form.

[\[3\]](#) See Section D of TIR 98-6.

[\[4\]](#) Under G.L. c. 62, § 1(j), a corporate trust is defined as "any partnership, association or trust, the beneficial interest of which is represented by transferable shares."

[\[5\]](#) This ruling makes no determination as to whether any of the Funds would have nexus with Massachusetts if their activities exceed those discussed herein.